IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRL.A.No. 842 of 2000()

C.C.NO.1121/1998 IN THE FILE OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, CHAVAKKAD

APPELLANT:

M.K.MURALEEDHARAN,
S/O.THANKAMMA,
METHANATH HOUSE,
THIRUVENKIDOM DESOM,
ERAVIPURAM,
CHAVAKKAD.

BY ADV. SRI.LLOYD JOSEPH VIVERA

RESPONDENTS:

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1. C.MADHAVIKUTTI,
W/O.RAMACHANDRAN NAIR,
CHINGANATTIL HOUSE,
POORAKALENGADU DESOM,
KANNINAYOOR

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.RAMACHANDRAN
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.842 of 2000-D

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Dated this the 31st day of October, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.1121/1998 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that on 03/04/1998 the accused borrowed a sum of Rs.1,40,000/- and when demanded repayment on 03/06/1998 issued the impugned cheque dated 03/08/1998 for a sum of Rs.1,40,000/- and that the same when presented got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P11. Defence examined DW.1 and Exts.D1 to D9.

4. It is the case of the accused that the impugned cheque is a signed blank cheque given by her at the time when the bid amount of two Kuries were given to her at the institution by name Nirmala Kuries of which the complainant is a partner and that the same has

been misused to launch the prosecution. The defence has produced Exts.D1 to D5 Kuri pass books and Exts.D6 to D9 agreements and Kuri Kychit. Exts.D1 to D2 are the passbooks of the bid Kuries and the amounts have been paid to the accused. PW.1 as well as DW.1 the Managing Partner of Nirmala Kuries has admitted the genuineness of Exts.D1 to D9. The court below has noted that the accused is a lady living far away from the residence of the complainant and it is unlikely that a huge sum of Rs.1,40,000/- would have been given to the accused without any supporting documents. It is pertinent to note that on 03/04/1998, the amount was given without any supporting documents and the cheque was given only on 03/06/1998. Moreover, it was admitted by PW.1 and DW.1 that Exts.D6 to D9 are Kuri agreements and Kuri Kychit executed by them and subsequently the accused defaulted in repayment of Exts.D1 and D2 Kuries. The court below has considered in detail the amounts received towards the bid Kuries which would work out around to Rs.1,10,000/- and the fact that the accused is a defaulter. Another important piece of evidence brought out from the evidence of DW.1 is that no steps are taken to realise the amounts paid towards the bid Kuries, despite the fact that further instalments are not remitted, and hence, in the above circumstances, the court found that the case set

up by the defence is more probable. In the circumstances, I find no reason to interfere with the findings of the court below. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.842 of 2000-D

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J U D G M E N T

31st October, 2007